

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

THOMAS L. DUTCHER,
a married person,

Plaintiff,

VS.

WASTE2ENERGY, INC.,
a Delaware Corporation,

Defendant.

No. C08-1307

PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIMS

Plaintiff Thomas L. Dutcher ("Dutcher"), by and through his attorney of record,
answers Defendant's Counterclaims as follows:

I. ANSWER

ANSWERING PARAGRAPH 1: Deny.

ANSWERING PARAGRAPH 2: Deny.

ANSWERING PARAGRAPH 3: This paragraph asserts a legal conclusion to which no response is necessary.

ANSWERING PARAGRAPH 4: Admit that Dutcher and EIC became acquainted in or about 2006. All other allegations are denied.

1 **ANSWERING PARAGRAPH 5:** Admit that EIC owned technology for producing a
2 batch oxidation system ("BOS") and that the technology includes dual chambers. Plaintiff
3 denies that Defendant's characterization of the BOS is correct in all respects.

4 **ANSWERING PARAGRAPH 6:** Plaintiff is without sufficient information or belief to
5 admit or deny the allegations of this paragraph and therefore denies same.

6 **ANSWERING PARAGRAPH 7:** Admit that Defendant and Dutcher ultimately
7 agreed to execute a Stock Purchase Agreement. But Plaintiff denies Defendant's
8 characterization of the referenced documents is necessarily accurate or complete and
9 affirmatively states that the terms of the documents speak for themselves.

10 **ANSWERING PARAGRAPH 8:** Plaintiff denies Defendant's characterization of the
11 referenced document is necessarily accurate or complete and affirmatively states that the
12 terms of the document speak for themselves.

13 **ANSWERING PARAGRAPH 9:** Plaintiff denies Defendant's characterization of the
14 referenced document is necessarily accurate or complete and affirmatively states that the
15 terms of the document speak for themselves.

16 **ANSWERING PARAGRAPH 10:** Deny.

17 **ANSWERING PARAGRAPH 11:** Plaintiff admits that during late 2006 and 2007, a
18 significant portion of EIC's operating revenue was generated by its interest in EnerWaste
19 Europe ("EWE.") Plaintiff denies the remainder of the paragraph.

20 **ANSWERING PARAGRAPH 12:** Plaintiff admits that the budget Dutcher used for
21 the Dumfries proposal used an assumption of \$2 million profit plus contingencies. Plaintiff
22 denies the remainder of the paragraph.

23 **ANSWERING PARAGRAPH 13:** Deny.

24 **ANSWERING PARAGRAPH 14:** Deny.

25 **ANSWERING PARAGRAPH 15:** Deny.

ANSWERING PARAGRAPH 16: Deny.

ANSWERING PARAGRAPH 17: Plaintiff is without sufficient information or belief to admit or deny the allegations of this paragraph and therefore denies same.

ANSWERING PARAGRAPH 18: Plaintiff admits that he was told by a representative of the Wyoming plant that the reason for the Wyoming plant's closure was opposition from the community and that he advised Mr. Stoodley of his understanding. All other allegations are denied.

ANSWERING PARAGRAPH 19: Deny.

ANSWERING PARAGRAPH 20: Plaintiff is without sufficient information or belief to admit or deny when Stoodley discovered the reason for the plant's closure and therefore denies same. Plaintiff denies the remainder of the paragraph.

ANSWERING PARAGRAPH 21: Deny.

ANSWERING PARAGRAPH 22: Deny.

ANSWERING PARAGRAPH 23: Deny.

ANSWERING PARAGRAPH 24: Plaintiff admits that during due diligence, Dutcher provided Defendant with a list of EIC's international sales representatives. Plaintiff admits that Dutcher mistakenly assigned exclusivity of one country to two representatives. Plaintiff denies the remainder of the paragraph.

ANSWERING PARAGRAPH 25: Deny.

ANSWERING PARAGRAPH 26: Deny.

ANSWERING PARAGRAPH 27: Plaintiff denies Defendant's characterization of the referenced document is necessarily accurate or complete and affirmatively states that the terms of the document speak for themselves.

1 **ANSWERING PARAGRAPH 28:** Plaintiff denies Defendant's characterization of
2 the referenced document is necessarily accurate or complete and affirmatively states that
3 the terms of the document speak for themselves.

4 **ANSWERING PARAGRAPH 29:** Plaintiff admits that prior to November 7, 2007,
5 EIC utilized the e-mail address of enerwaste@aol.com for business related e-mails.
6 Plaintiff denies the remainder of the paragraph.

7 **ANSWERING PARAGRAPH 30:** Admit.

8 **ANSWERING PARAGRAPH 31:** Deny.

9 **ANSWERING PARAGRAPH 32:** Deny.

10 **ANSWERING PARAGRAPH 33:** Plaintiff is without sufficient information or belief
11 to admit or deny the allegations of this paragraph and therefore denies same.

12 **ANSWERING PARAGRAPH 34:** Deny.

13 **ANSWERING PARAGRAPH 35:** Deny.

14 **ANSWERING PARAGRAPH 36:** Plaintiff is without sufficient information or belief
15 to admit or deny the allegations of this paragraph and therefore denies same.

16 **ANSWERING PARAGRAPH 37:** No response is required to this paragraph
17 therefore Plaintiff denies same.

18 **ANSWERING PARAGRAPH 38:** Deny.

19 **ANSWERING PARAGRAPH 39:** Deny.

20 **ANSWERING PARAGRAPH 40:** Deny.

21 **ANSWERING PARAGRAPH 41:** Deny.

22 **ANSWERING PARAGRAPH 42:** Deny.

23 **ANSWERING PARAGRAPH 43:** No response is required to this paragraph
24 therefore Plaintiff denies same.

25 **ANSWERING PARAGRAPH 44:** Deny.

ANSWERING PARAGRAPH 45: This paragraph constitutes a legal conclusion to which no response is necessary.

ANSWERING PARAGRAPH 46: Plaintiff denies Defendant's characterization of the referenced document is necessarily accurate or complete and affirmatively states that the terms of the document speak for themselves.

ANSWERING PARAGRAPH 47: Plaintiff admits the agreement speaks for itself and denies all allegations to the contrary.

ANSWERING PARAGRAPH 48: Deny.

ANSWERING PARAGRAPH 49: Deny.

ANSWERING PARAGRAPH 50: Deny.

ANSWERING PARAGRAPH 51: No response is required to this paragraph therefore Plaintiff denies same.

ANSWERING PARAGRAPH 52: Deny.

ANSWERING PARAGRAPH 53: Deny.

ANSWERING PARAGRAPH 54: This paragraph asserts a legal conclusion to which no response is necessary therefore Plaintiff denies same.

ANSWERING PARAGRAPH 55: Deny.

ANSWERING PARAGRAPH 56: No response is required to this paragraph therefore Plaintiff denies same.

ANSWERING PARAGRAPH 57: Deny.

ANSWERING PARAGRAPH 58: Deny.

ANSWERING PARAGRAPH 59: Deny.

ANSWERING PARAGRAPH 60: No response is required to this paragraph therefore Plaintiff denies same.

1 **ANSWERING PARAGRAPH 61:** Admit that Defendant became the controlling
2 shareholder of EIC. The balance of this paragraph states a legal conclusion to which no
3 response is required.

4 **ANSWERING PARAGRAPH 62:** Deny.

5 **ANSWERING PARAGRAPH 63:** This paragraph asserts a legal conclusion to
6 which no response is necessary therefore Plaintiff denies same.

7 **ANSWERING PARAGRAPH 64:** Deny.

8 **ANSWERING PARAGRAPH 65:** No response is required to this paragraph
9 therefore Plaintiff denies same.

10 **ANSWERING PARAGRAPH 66:** Deny.

11 **ANSWERING PARAGRAPH 67:** Deny.

12 **ANSWERING PARAGRAPH 68:** Deny.

13 **ANSWERING PARAGRAPH 69:** No response is required to this paragraph
14 therefore Plaintiff denies same.

15 **II. AFFIRMATIVE DEFENSES**

16 By way of further answer to Defendant's Counterclaims, Plaintiff asserts the
17 following affirmative defenses:

- 18 a. Failure to state a claim upon which relief may be granted;
- 19 b. Defendant's counterclaims are barred by the equitable doctrines of
20 estoppel, waiver, laches and/or unclean hands;
- 21 c. Failure or lack of consideration;
- 22 d. Failure to plead fraud claims with particularity;
- 23 e. Plaintiff has an adequate remedy at law;
- 24 h. Any damages suffered by Defendants were caused by Defendants, their
25 agents or third parties over whom Plaintiff had no control;

i. Unjustifiable reliance;
k. Defendant has failed to mitigate its damages, if any;
l. As to first cause of action, claims are barred by the economic loss doctrine;
m. Defendant has failed to fulfill a condition precedent under the contract; and
n. Defendant's claims are barred by Defendant's own material breach of contract.


III. PRAYER FOR RELIEF

Therefore, Plaintiff requests the following relief:

- a. Dismissal of Defendant's Counterclaims with prejudice;
b. Entry of judgment in favor of Plaintiff as requested in the Complaint;
c. Award of Plaintiff's attorneys' fees and costs to the extent allowed by applicable law; and
d. Such other and further relief as the Court deems just and equitable.

DATED this 9th day of December, 2008.

CHMELIK SITKIN & DAVIS P.S.


Richard A. Davis III, WSBA #20940
Attorney for Plaintiff Thomas L. Dutcher

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I certify that on the 9th day of
December, 2008,
copies of the foregoing document
were provided via
Electronic mail
to the following:
John C. Chun
Attorney for Defendant
By: JS Campbell